

Appendix B: Legal Chronology of Westslope Cutthroat Trout Listing Milestones

In June of 1997, the American Wildlands; Clearwater Biodiversity Project, Inc.; Montana Environmental Information Center; The Pacific Rivers Council; Trout Unlimited, Madison-Gallatin Chapter; and Mr. Bud Lilly petitioned for federal threatened species listing of the westslope cutthroat trout. The following chronology of events details the evolution of this process.

June 6, 1997

FWS receives a petition to list the westslope cutthroat trout as a threatened species throughout its range, pursuant to the Endangered Species Act.

June 6, 1997

Period of 90-day petition review begins. FWS must decide whether or not the petition presents sufficient information to indicate that the requested action (listing) is warranted.

July 2, 1997

FWS sends a letter to petitioners stating that, on the basis of FWS final listing priority guidance published in the December 5, 1996 *Federal Register* (61 FR 64481), the FS has determined that the petition falls into the Tier 3 (low priority) category, and that westslope cutthroat trout do not face "imminent, high-magnitude threats." The Service will proceed with the 90-day finding when completion of ongoing, higher-priority activities allows available funds to be allocated to westslope cutthroat trout.

September 4, 1997

End of 90-day period for petition review.

September 24, 1997

Petitioners send a letter (60-day notice of intent) to Interior Secretary and FWS stating that, unless the FS promptly issues the 90-day finding, the petitioners intend to pursue federal court litigation for alleged violations of the ESA.

January 25, 1998

FWS receives from the petitioners an amended petition that contains a substantial amount of new information on westslope cutthroat trout.

January 25, 1998

Period of 90-day review for amended petition begins. The FWS must decide whether or not the amended petition presents substantial information indicating a listing may be warranted.

March 17, 1998

Petitioners file a complaint in the U.S. District Court for the District of Columbia requesting that the court declare that FWS failure to issue a 90-day finding is a violation of the ESA, its implementing regulations, and the Administrative Procedures Act; and that the court issue a preliminary and permanent injunction requiring the FWS to issue a

90-day finding on the petition and promptly publish such finding in the *Federal Register*. The complaint was filed before the end of the 90-day review for the amended petition.

April 1, 1998

The FWS sends a letter to the petitioners stating that, although the tier system for prioritizing listing actions remains in full force and effect, the FWS is proceeding with preparation of a 90-day finding on the amended petition.

June 10, 1998

The FWS publishes a notice in the *Federal Register* (63 FR 31691) of a 90-day finding that the amended petition provided substantial information indicating that the petitioned action may be warranted; FWS immediately begins a status review of westslope cutthroat trout. In the notice, the FWS requested data, information, technical critiques, comments, or questions relevant to the amended petition.

July, 1998

The FWS receives requests to extend the comment period from MFWP, the Idaho Department of Fish and Game, and US Forest Service Regions 1 and 4. As a result, the FWS announces reopening of the comment period in the August 17, 1998 *Federal Register* (63 FR 43901), and indicates that comments on the 90-day finding should be submitted by October 13, 1998. A September 23, 1998 *Federal Register* notice (63 FR 50850) describes corrections to the preceding notice and the FWS's need for nine months from the date of the 90-day finding (June 10, 1998) to complete the status review.

September 30, 1998

The U.S. District Court dismisses the petitioner's March 17, 1998 complaint pertaining to westslope cutthroat trout.

March 26, 1999

Legal representatives of the petitioners send a Notice of Intent to Interior Secretary Babbitt and the Service stating that, unless the Service promptly issues the 12-month finding, the petitioners intend to pursue federal court litigation for alleged violations of the Act.

August 5, 1999

Legal representatives of the petitioners filed a complaint in the U.S. District Court for the District of Columbia requesting that the court declare that the Service's failure to issue a 12-month finding on the June 6, 1997 petition is a violation of the Act, its implementing regulations, and the Administrative Procedures Act; and that the court issue a preliminary and permanent injunction requiring the Service to issue a 12-month finding on the petition and promptly publish such finding in the *Federal Register*.

September, 1999

The FWS completes the status review for westslope cutthroat trout in the United States.

March 8, 2000

The FWS and its co-defendants reach an agreement with the plaintiffs that, among other things, on or before April 10, 2000, the FWS shall submit for publication in the *Federal Register* a "warranted; not warranted; or warranted, but precluded" determination regarding the westslope cutthroat trout in accordance with Section 4(b)(3)(B) of the ESA.

April 6, 2000

The FWS Director signs a 12-month not-warranted finding for westslope cutthroat trout.

October 23, 2000

Plaintiffs file a lawsuit in federal court claiming the FWS was arbitrary and capricious in its not-warranted decision.

November 2001

Oral arguments by plaintiffs and defendants are heard in federal court in Washington D.C.

March 31, 2002

The court ruled that the FWS must re-evaluate its not-warranted finding. In reconsidering whether to list the westslope cutthroat trout as a threatened species, the FWS must evaluate the threat of hybridization as it bears on the statutory listing factors of the Endangered Species Act. The court gave the Service 12 months to make this evaluation.

August 8, 2003

The FWS determined that the westslope cutthroat trout should not be listed as a threatened species under the ESA. One of the key reasons cited for this determination was the ongoing conservation efforts by FWS, such as the proposed project considered in this document, and their contribution to the viability of these indigenous species in Montana. However, the petitioners may reserve the right to appeal this decision and/or the court response to the agency's decision.

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